



DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rates for Non-Range Occupations in 2023

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce the 2023 Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range. AEWRs are the minimum wage rates the DOL has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment to help ensure the Department meets its statutory obligation to certify that the employment of H-2A foreign workers will not have an adverse effect on the wages of agricultural workers in the United States (U.S.) similarly employed. In this notice, DOL announces updates of the AEWRs and the average AEWR, which is used to calculate adjustments to required bond amounts for H-2A Labor Contractors.

DATES: These rates are applicable *January 1, 2023*.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5311, Washington, DC 20210, telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H-2A labor certification from DOL. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rates for 2023

DOL's H-2A regulations at 20 CFR 655.122(l) provide that employers must pay their H-2A workers and workers in corresponding employment at least the highest of: (i) the AEWR; (ii) a prevailing wage rate if the Office of Foreign Labor Certification (OFLC) Administrator has approved a prevailing wage survey for the applicable crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity; (iii) the agreed-upon collective bargaining wage rate; (iv) the Federal minimum wage rate; or (v) the State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period. Further, when the AEWR is adjusted during a work contract and is higher than the highest of the previous AEWR, a prevailing rate for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the State minimum wage rate, the employer must pay at least that adjusted AEWR upon the effective date of the new rate, as provided in the applicable *Federal Register* Notice. *See* 20 CFR 655.120(b)(3). Similarly, when the AEWR is adjusted during a work contract and lower than the wage rate that is guaranteed on

the job order, the employer must continue to pay at least the wage rate guaranteed on the job order. *See* 20 CFR 655.120(b)(4).

On November 5, 2020, DOL published a final rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 85 FR 70445 (2020 AEW Final Rule), to establish a new methodology for setting hourly AEWs, effective December 21, 2020. Litigation followed the 2020 AEW Final Rule’s publication. On December 23, 2020—two days after the 2020 AEW Final Rule went into effect—the court in *United Farm Workers, et al. v. Dep’t of Labor, et al.*, No. 20-cv-01690 issued an order preliminarily enjoining the Department from further implementing the 2020 AEW Final Rule and ordering the Department to use the 2010 H-2A Final Rule methodology for establishing hourly AEWs.¹ On April 4, 2022, the court vacated the 2020 AEW Final Rule.² Accordingly, DOL has used the methodology set forth in the 2010 H-2A Final Rule to determine the 2023 AEWs.

The 2023 AEWs for all agricultural employment (except for the herding or production of livestock on the range, which is covered by 20 CFR 655.200 through 655.235) for which temporary H-2A certification is being sought is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) in the State or region as published by the U.S. Department of Agriculture (USDA) in the November 23, 2022, Farm Labor Report. DOL’s regulation, 20 CFR 655.120(b)(2), requires that the OFLC Administrator publish the USDA field and livestock worker (combined) wage data as AEWs in a *Federal Register* Notice. Accordingly, the 2023 AEWs to be paid for agricultural work performed by H-2A and workers in corresponding employment on and after the effective date of this notice are set forth in the table below:

TABLE—2023 ADVERSE EFFECT WAGE RATES

¹ 509 F. Supp. 3d 1225 (E.D. Cal. 2020).

² No. 20-cv-01690-DAD-BAK, 2022 WL 1004855 (E.D. Cal. April 4, 2022).

State 2023 AEWRS

Alabama	\$13.67
Arizona	\$15.62
Arkansas	\$13.67
California	\$18.65
Colorado	\$16.34
Connecticut	\$16.95
Delaware	\$16.55
Florida	\$14.33
Georgia	\$13.67
Hawaii	\$17.25
Idaho	\$15.68
Illinois	\$17.17
Indiana	\$17.17
Iowa	\$17.54
Kansas	\$17.33
Kentucky	\$14.26
Louisiana	\$13.67
Maine	\$16.95
Maryland	\$16.55
Massachusetts	\$16.95
Michigan	\$17.34
Minnesota	\$17.34
Mississippi	\$13.67
Missouri	\$17.54
Montana	\$15.68

Nebraska	\$17.33
Nevada	\$16.34
New Hampshire	\$16.95
New Jersey	\$16.55
New Mexico	\$15.62
New York	\$16.95
North Carolina	\$14.91
North Dakota	\$17.33
Ohio	\$17.17
Oklahoma	\$14.87
Oregon	\$17.97
Pennsylvania	\$16.55
Rhode Island	\$16.95
South Carolina	\$13.67
South Dakota	\$17.33
Tennessee	\$14.26
Texas	\$14.87
Utah	\$16.34
Vermont	\$16.95
Virginia	\$14.91
Washington	\$17.97
West Virginia	\$14.26
Wisconsin	\$17.34
Wyoming	\$15.68

The AEWs set forth in the table above are the AEWs applicable to the SOC 45-2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse), published by the OFLC

Administrator in accordance with 20 CFR 655.120(b)(2). Accordingly, the simple average of these AEWRs constitutes the average AEWR. *See* 20 CFR 655.103(b) (definition of average AEWR). The simple average is calculated by finding the sum of the AEWRs listed in the table above, then dividing by the total number of AEWRs, which is currently 49 ($\$790.61 / 49 = \16.13). On and after the effective date of this notice, the average AEWR to be used to calculate the bond amounts required under 20 CFR 655.132(c)(2)(ii) is \$16.13.

AUTHORITY: 20 CFR 655.120(b)(2); 20 CFR 655.103(b).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

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